

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Priority Mail
Priority Mail Contract 55

Docket No. MC2013-40

Competitive Product Prices
Priority Mail Contract 55 (MC2013-40)
Negotiated Service Agreement

Docket No. CP2013-52

ORDER ADDING PRIORITY MAIL CONTRACT 55 TO THE
COMPETITIVE PRODUCT LIST

(Issued March 11, 2013)

The Postal Service seeks to add a new product identified as Priority Mail Contract 55 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Priority Mail Contract 55 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 21, 2013 (Request).

I. BACKGROUND

On February 21, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Contract 55 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Id.* at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a copy of Governors’ Decision No. 11-6, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, and a certification of compliance with 39 U.S.C. § 3633(a). In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of Governors’ Decision No. 11-6, the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.³

On February 22, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴ In that Order, the Commission also requested supplemental information from the Postal Service concerning several of the contract provisions. *Id.*

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Order No. 563, Docket Nos. MC2011-1 and CP2011-2, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

⁴ Notice and Order Concerning the Addition of Priority Mail Contract 55 to the Competitive Product List, February 22, 2013 (Order No. 1665).

at 3. The Postal Service filed its response on March 1, 2013⁵ and an amendment to the initial contract on March 8, 2013.⁶

II. COMMENTS

The Public Representative filed comments on February 28, 2013.⁷ No other interested person submitted comments.

The Public Representative states that she reviewed the contract, the Statement of Supporting Justification, and the financial data and model that accompanied the Postal Service's Request. *Id.* at 2. Based on this review, the Public Representative concludes that Priority Mail Contract 55 should be categorized as a competitive product and added to the competitive product list. *Id.* She notes that the Postal Service's assertions concerning the requirements of section 3642(b)(1) appear to provide reasonable support for categorizing Priority Mail Contract 55 as competitive. *Id.*

In addition, the Public Representative states that the contract should generate sufficient revenues to cover costs during the first year. *Id.* at 3. She raises a concern that the Postal Service filed no data to demonstrate compliance with 39 U.S.C. § 3633(a) in subsequent contract years, but notes that annual cost, revenue, and volume data will be filed annually as part of the Annual Compliance Report. *Id.*

The Public Representative also comments on concerns raised by the Commission's request for supplemental information. First, she notes that the contract does not provide clear information on prices during the Second and Third quarters of the first contract year. *Id.* Second, she notes that section VI of the contract "contains either a typo or missing words that make the Amendments section of the contract unclear." *Id.* She urges the Commission to ensure that these issues are clarified by the

⁵ Responses of the United States Postal Service to Request for Supplemental Information, March 1, 2013 (Postal Service Response).

⁶ Docket No. CP2013-52, Notice of United States Postal Service of Amendment to Priority Mail Contract 55, With Portions Filed Under Seal, March 8, 2013 (Amendment).

⁷ Public Representative Comments on Postal Service Request to Add Priority Mail Contract 55 to Competitive Product List, February 28, 2013 (PR Comments).

Postal Service and that the Postal Service files a contract errata for Commission review. *Id.* at 3-4.

III. SUPPLEMENTAL INFORMATION

The Commission requested supplemental information concerning certain contract provisions. Order No. 1665 at 3. First, the Commission sought clarification of the Second Quarter, First Year contract prices. *Id.* In response, the Postal Service represents that the chart appearing in sections I.G.3 and I.G.4 also applies to the Second Quarter, First Year. Postal Service Response at 2. The Amendment clearly shows what prices apply in the Second Quarter, First Year. Amendment, Attachment A at 1-2. Second, the Commission sought clarification of section VI of the contract, the provision addressing contract amendments. Order No. 1665 at 3; Request, Attachment B at 4. The Amendment reflects the parties' understanding that the contract cannot be amended except in writing by agreement of both parties. Amendment, Attachment A at 2. Finally, the Commission inquired whether the Third Quarter, First Year prices were intended to be based on First Quarter volumes, as stated in the initial contract. Order No. 1665 at 3. In response, the Postal Service represents that the parties intended to base the Third Quarter, First Year prices on Second Quarter, First Year volumes. Postal Service Response at 4. The Amendment contains revised language concerning Third Quarter, First Year pricing, reflecting the understanding represented in the Postal Service's Response. Amendment, Attachment A at 2.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract and amendment, the supporting data filed under seal, the supplemental information provided by the Postal Service, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Contract 55 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34.

In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Priority Mail service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that Priority Mail Contract 55 is appropriately classified as competitive and is added to the competitive product list.

Cost considerations. Because Priority Mail Contract 55 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

The Postal Service has submitted a certified statement, along with supporting revenue and cost data, illustrating that the contract meets the applicable statutory and regulatory requirements. Request, Attachment D. After reviewing the pricing structure contained in the contract, as amended, the Commission finds that the supporting revenue and cost data are sufficient to conclude that the contract should cover its costs during its first year. The Public Representative raises concerns about the lack of data for subsequent years of the contract. PR Comments at 3. As noted by the Public Representative, the Commission will review the contract's financial performance on an

annual basis for consistency with 39 U.S.C. § 3633(a) as part of its Annual Compliance Determination. In addition, the contract contains provisions allowing prices to adjust on an annual basis “by the average increase in prices of general applicability for Priority Mail Commercial Plus Pricing.” Request, Attachment B at 3. These provisions should allow the contract’s revenues to cover costs in subsequent years.

Consequently, the Commission finds that Priority Mail Contract 55 complies with the provisions applicable to rates for competitive products. As part of its Annual Compliance Determination proceedings, the Commission will review the contract’s financial performance for consistency with section 3633(a).

Other considerations. By its terms, the contract becomes effective on March 12, 2013. Request, Attachment B at 4. The contract is scheduled to expire 3 years after the effective date, unless, among other things, either party terminates the contract with 30 days’ written notice to the other party. *Id.*

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

In conclusion, the Commission approves Priority Mail Contract 55 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Priority Mail Contract 55 (MC2013-40 and CP2013-52) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The Postal Service shall notify the Commission if the instant contract terminates prior to the scheduled expiration date as discussed in this Order.
3. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2013-40 and CP2013-52. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Priority Mail Contract 55

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